

SERVICE DATE - FEBRUARY 8, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-567 (Sub-No. 1X)

RUTHERFORD RAILROAD DEVELOPMENT CORPORATION--
ABANDONMENT EXEMPTION--IN RUTHERFORD COUNTY, NC

Decided: February 2, 2001

In this decision, we are denying a petition filed by King Associates L.L.P (King) to vacate the decision of the Director of the Board's Office of Proceedings (Director), issuing a notice of interim trail use or abandonment (NITU) in this proceeding.

BACKGROUND

Rutherford Railroad Development Corporation (RRDC) and Southeast Shortline, Inc. d/b/a Thermal Belt Railway (TBRY) jointly filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances for RRDC to abandon, and TBRY to discontinue service over, a 7.87-mile line of railroad between milepost SB-180.47 in Spindale and milepost SB-188.34 near Gilkey in Rutherford County, NC. Notice of the exemption was served and published in the Federal Register on July 27, 2000 (65 FR 46195-96). The exemption became effective on August 26, 2000. Previously, on July 12, 2000, the Bechtler Development Corporation (BDC) filed a petition requesting that an interim trail use condition be imposed in this proceeding and submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. BDC also acknowledged that the use of the right-of-way is subject to further reactivation of rail service. By letter filed July 17, 2000, RRDC indicated its willingness to negotiate with BDC for interim trail use. In a submission filed August 3, 2000, King, which identified itself as a reversionary landowner, opposed the use of the right-of-way as a trail, arguing that it was the fee holder to the right-of-way and that it had leased the property to a business that has been using the property since 1995. King also stated that the right-of-way had previously been abandoned and that the right-of-way had reverted to King (and perhaps to other reversionary interest holders).

By decision and notice of interim trail use or abandonment (NITU) served August 25, 2000, a 180-day period was authorized for RRDC to negotiate an interim trail use/rail banking agreement with BDC for the right-of-way.¹ In the same decision, it was determined that King had not demonstrated that the line previously had been abandoned or that the Board lacks jurisdiction to issue a NITU and that, if there is interim trail use on the property,

¹ The NITU is scheduled to expire on February 22, 2001.

any reversionary landowner can bring a takings claim before the United States Court of Federal Claims under the Tucker Act, 28 U.S.C. 1491(a)(1).

On September 25, 2000, King filed a letter in response to the August 25 decision, again arguing that the Board lacks jurisdiction to issue a NITU. We will treat this letter as a petition to reopen.²

King asserts that the line was abandoned following authorization of abandonment by the Interstate Commerce Commission (ICC) in 1988, and that the ICC lost jurisdiction at that time. King maintains that, as a result, the property now belongs to the reversionary interest holders.

On September 26, 2000, RRDC filed a reply in opposition to King's filing. RRDC argues that issuance of a NITU was appropriate here, as BDC's trail use request was submitted while the abandonment exemption in this proceeding was pending before the Board, and before consummation of the abandonment. RRDC also relies on language in the August 25, 2000 decision, finding that this property, even if authorized for abandonment in 1988, again became an active rail line subject to ICC/Board jurisdiction when RRDC purchased it and Thermal Belt Railway leased it and undertook to operate it in 1989. See Southeast Shortlines Inc., d/b/a Thermal Belt Railway--Lease, Operation and Acquisition Exemption--A Rail Line In Rutherford County, NC, Finance Docket No. 31484 (ICC served June 22, 1989) (Southeast Shortlines). Cf., RLTD Railway Corp. et al. v. STB et al., 166 F.3d 808 (6th Cir. 1999) (ICC/Board lost jurisdiction over a rail line that was severed from the interstate rail system long before the trail condition was sought).

DISCUSSION AND CONCLUSIONS

We will deny the petition to reopen. Under 49 CFR 1115.4, a petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. None of these criteria has been met in this case. King has not demonstrated that the line was ever abandoned or severed from the interstate rail system. Rather this property, even if approved for abandonment in 1988, again became an active rail line subject to ICC/Board jurisdiction as a result of the purchase/lease transaction in Southeast Shortlines that was authorized in 1989. Under the circumstances, we find no basis to conclude that we lack jurisdiction to process a notice of abandonment exemption in this proceeding and to entertain trail use requests.

Under the Trails Act, our authority is ministerial and extends only to voluntary agreements entered into between the railroad and the trail user. Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails), aff'd, National Wildlife Federation v.

² Under our general rules of appellate procedure at 49 CFR 1115.4, a petition to reopen an administratively final action on grounds of material error may be filed at any time.

ICC, 850 F.2d 694 (D.C. Cir. 1988). Our discretion under the Trails Act is limited to determining whether the statutory requirements regarding rail banking and the trail user's assumption of financial and managerial responsibility are met. Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990), Iowa Southern R. Co.--Exemption--Abandonment, 5 I.C.C.2d 496, 503 (1989). Accordingly, when 16 U.S.C. 1247(d) is properly invoked, as it was here, we must issue a NITU.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The petition to reopen is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary